No. 14719

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

AUSTIN J. SHELTON,

Appellant,

vs.

GUAM SERVICE GAMES, a co-partnership,

Appellee.

Appeal From the District Court of Guam, Territory of Guam.

APPELLANT'S REPLY BRIEF.

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APPELLANT'S REPLY BRIEF.

I.

Appellee Seeks to Give Section 1674 a Construction That Would Make Its Territorial Limitations Meaningless and Ineffective.

At page 9 of its brief, appellee states,

". . . The inclusion of the word 'district' in the Guamanian Code is thus open to two constructions:

"A. It is meaningless and the rule of the common law is applicable.

"B. It is of some meaning territorially."

Appellee's proposition "A" contains two fallacies. In the first place, it is a *non sequitur*. Even conceding that the term "district" itself is meaningless, it does not fol-

low that Section 1674 is meaningless, or that the rule of the common law becomes applicable. Appellee does not try to give any effect to the statute after ruling out the term "district" as meaningless. Instead, appellee concludes that the rule of the common law is automatically applicable. However, it is obvious that if "district" is dropped entirely from Section 1674, the statute does not automatically wither away. It still limits the restraint to "a specified city or part thereof." If appellee's argument is followed to its logical end, it proves nothing, for the remaining territorial restraint is even less than that urged by appellant.

Secondly, to say that the rule of the common law is applicable is to say that Section 1674 is ineffective. Appellee concedes, at page 9 of its brief, that the purpose of the statute is to define what is a reasonable territorial limit. Yet appellee would render nugatory the territorial limit created by the statute and, instead, revert to the rule of the common law. To say the least, this is straining the process of statutory construction to its very limits. The statute may not be given a construction by which its effectiveness would be destroyed. (50 Am. Jur. 361.)

The alternative construction offered by appellee is equally untenable. Appellee says that if "district" is to be given any meaning it must mean the Judicial District of Guam. The simple answer is that while Section 1674 was enacted in 1933, the Judicial District of Guam was not created until 1950. (48 U. S. C. A. 1424.) Obviously, the legislative intent of the Guam legislature in 1933 cannot be divined from legislation of Congress 17 years later. Furthermore, Congress used the term "Judi-

cial District" here in the same sense as it used it with reference to judicial districts elsewhere; the term was not intended to have any peculiar meaning as far as Guam is concerned.

Conclusion.

We respectfully submit that the error of the lower court in rendering Section 1674 nugatory is emphasized rather than diminished by the arguments advanced by appellee. Accordingly, the judgment of the court below should be reversed and the cause remanded with instructions to modify the injunctive portion of the judgment by limiting the restraint therein imposed to the Municipality of Agana.

Dated: November 23, 1955.

Respectfully submitted,

SPIEGEL, TURNER & STEVENS, and
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Attorneys for Appellant.